

**IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

American Electric Power Service, <i>et al.</i> ,)	
Petitioners,)	
)	
v.)	No. 23-1378
)	
Federal Energy Regulatory Commission,)	
Respondent.)	

**MOTION OF RESPONDENT FEDERAL ENERGY
REGULATORY COMMISSION TO TRANSFER APPEAL
TO THE DISTRICT OF COLUMBIA CIRCUIT**

Pursuant to Rule 27 of the Federal Rules of Appellate Procedure, Respondent Federal Energy Regulatory Commission (“Commission”) hereby moves this Court to transfer the above-captioned appeal to the United States Court of Appeals for the District of Columbia Circuit, in accordance with 28 U.S.C. § 2112(a)(5). A petition for review of the same order challenged here was filed in that court before the petition in this case was filed in this Court. *City Utilities of Springfield, Missouri, et al. v. FERC*, D.C. Cir. No. 23-1054. Accordingly, the Commission is required, under 28 U.S.C. § 2112(a)(1), to file the certified index to the record exclusively in the D.C. Circuit. Counsel for the Commission has contacted counsel for the petitioners in this case, who take no position on the transfer.

Both this appeal and the D.C. Circuit appeal challenge the Commission's "Order Accepting Tariff Revisions Subject to Condition," *Southwest Power Pool, Inc.*, 181 FERC ¶ 61,076 (2022) ("October 28 Order"), concerning proposed revisions to the Open Access Transmission Tariff of Southwest Power Pool, Inc. regarding regional allocation of the costs of certain transmission facilities. Petitioners and other parties filed requests for rehearing of the October 28 Order with the Commission. On December 29, 2022, the Commission issued a "Notice of Denial of Rehearing by Operation of Law and Providing for Further Consideration," 181 FERC ¶ 62,211, in which the Commission gave notice that it intended to address the requests for rehearing in a future order.

Petitioners filed their petition for review in this Court on February 24, 2023, stating that their rehearing request was deemed denied by operation of law. Another group of petitioners likewise filed a petition for review of the October 28 Order on February 24 in the District of Columbia Circuit, docketed as D.C. Cir. No. 23-1054. Based on information provided to Commission counsel by counsel for the petitioners in each Circuit, Commission counsel understands that the D.C. Circuit petitioners filed their petition at 2:58 p.m. EST, whereas the Eighth Circuit petitioners filed their petition at 4:03 p.m. CST.

Because the D.C. Circuit proceeding was instituted over two hours earlier, the Commission is required by statute to file the record in that proceeding: “[Where] proceedings have been instituted in two or more courts of appeals with respect to the same order, the agency . . . shall file the record in the court in which proceedings with respect to the order were first instituted.” 28 U.S.C. § 2112(a)(1).

Accordingly, the Commission requests that this petition for review be transferred to the D.C. Circuit so that it may be consolidated with the earlier-filed petition in Case No. 23-1054.

Respectfully submitted,

Robert H. Solomon
Solicitor

/s/ Carol J. Banta
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April 7, 2023

CERTIFICATE OF COMPLIANCE

In accordance with Fed. R. App. P. 32(g), I certify that this Motion complies with the type-volume limit of Fed. R. App. P. 27(d)(2)(A) because this Motion contains 438 words.

I further certify that this Motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this Motion has been prepared in Times New Roman 14-point font using Microsoft Word 365.

/s/ Carol J. Banta

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CERTIFICATE OF SERVICE

I hereby certify that on April 7, 2023, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Carol J. Banta

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